149 US 769

RECORD, CASE No. 13,728.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 147.

THE CITY COUNCIL OF AUGUSTA, APPELLANT,

vs.

HARRIET CAZENOVE JONES AND FRANK CAZENOVE JONES, ADMINISTRATORS, WITH THE WILL ANNEXED, OF THE ESTATE OF GAZAWAY B. LAMAR, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 11, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 20, 1892.

1 [L. S.] The President of the United States of America to Gazaway De Rosset Lamar, as executor of the will of Gazaway B. Lamar, deceased, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of February, A. D. 1882, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by the City Council of Augusta, in the city of Augusta, State of Georgia, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit, under the penalty on you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 15th day of December, in the year one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundredth and sixth.

(S'g'd) JOSEPH M. DEUEL, *Clerk.*

TOWNSEND & WEED,
Complainant's Sol'rs.

The defendant is required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of February, 1882, or the bill will be taken *pro confesso* against him.

J. M. D., *Clerk.*

1*a* (Endorsed:) I hereby certify that on the 15th day of December, 1881, at the city of New York, in my district, I personally served the within subpœna upon the within-named Gazaway De Rosset Lamar by exhibiting to him the within original and at the same time leaving with him a copy thereof. Dated January 6th, 1882. (S'g'd) Henry E. Knox, U. S. marshal, S. D. N. Y.

2 Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

THE CITY COUNCIL OF AUGUSTA, Complainant,
against
GAZAWAY DE ROSSET LAMAR, as Executor of the Will of Gazaway B. Lamar, Deceased, Defendant. } Complaint.

To the judges of the circuit court of the United States for the southern district of New York, in the second circuit:

The City Council of Augusta, in the city of Augusta, State of Georgia, a citizen of the State of Georgia, brings this its bill against Gazaway De Rosset Lamar, as executor of the will of Gazaway B. Lamar, deceased, of the city of New York, in the State of New

York, and a citizen of the State of New York, and therefore your orator complains and says:

I. On information and belief that, at the times hereafter mentioned, your orator was a municipal corporation, incorporated under the laws of the State of Georgia, with the name or title above mentioned, to carry on the municipal government of the city of Augusta, in the State of Georgia, and was authorized to receive, sue for, and hold all donations of real or personal property which might be given, granted, or demised to it for charitable purposes.

II. On information and belief that on or about the 28th
3 day of September, 1872, Gazaway B. Lamar, now deceased, then and up to the time of his death a resident of the city and State of New York, made and executed his last will and testament, a copy whereof is hereunto annexed, whereby he gave to your orator fifty thousand dollars ($50,000), to be paid out of a portion of his estate at the time of the making of said will in action, to wit, out of certain cotton claims held and owned by him against the Government of the United States, as will more fully appear by said will and the 11th item thereof, which is as follows:

"Item 11. I give and bequeath next out of the residue of my cotton claims, when collected, one hundred thousand dollars, if so much remain, and if not, then whatever balance may remain, to be divided equally between the mayor and aldermen of the city of Augusta and the Oglethorpe association or infirmary, at Savannah, of which Mr. John Stoddard is now president and Dr. William Duncan is secretary, to be devoted to establishing and sustaining one or more hospitals for colored persons in each of said cities who have been slaves, and their descendants, giving preference to those which once belonged to or was hired by me, more especially to provide for the old, the decrepit, the blind, the deaf and dumb, the insane, and for care of the lying in of females for a period not exceeding six weeks on each occasion.

But if the city of Augusta do not establish at least one hospital within two years after this bequest is due and payable, then and in that event the whole sum shall be for the benefit of the institution already referred to in the city of Savannah."

III. That your orator is the legatee designated in the clause above quoted from said will as the mayor and aldermen of the city of Augusta, and has established at least one hospital within the time specified in said clause.

4 IV. On information and belief that a few months prior to the death of said Gazaway B. Lamar, deceased, he collected and received from the said United States the amount, or the larger part of the amount, of said cotton claims on account of the same, to wit, a sum not less than four hundred and eighty thousand dollars ($480,000), which was more than sufficient to pay all the legacies which were entitled by said will to a priority of payment over those given by said 11th item and to pay in full the legacies given by said item.

V. On information and belief that on or about the 4th day of October, 1874, the said Gazaway B. Lamar, deceased, died at the

city of New York, in the State of New York, having a large estate, amounting, exclusive of the collections made by him on account of his cotton claims, to one hundred thousand dollars and upwards, and, with the amounts collected on said claims, amounting to five hundred thousand dollars and upwards.

VI. On information and belief that on or about the 10th day of November, 1874, the said will of said deceased was duly proved and admitted to probate before the surrogate of the county of New York, who had jurisdiction thereof, as the last will and testament of the deceased, and thereupon on said date letters testamentary to administer the estate of said deceased pursuant to said will were duly issued to Gazaway De Rosset Lamar, the defendant above named.

VII. On information and belief that by the statutes of New York for such case made and provided pecuniary legacies are payable one year from the date of issuing of letters testamentary.

VIII. On information and belief that more than five years have elapsed since the said legacy given by the said 11th item of said will to your orator was due and payable.

5 IX. On information and belief that all the debts of the deceased and all the legatees entitled to legacies and to a priority of payment over your orator by said will have been paid and the defendant has in hand and applicable to the payment of the legacy given by said will to your orator money sufficient to pay the same in full; but, although demand therefor has frequently been made, the defendant refuses to pay to your orator the legacy given to it by said will or any part thereof.

X. That the matter in dispute in this suit, exclusive of costs, exceeds five thousand dollars ($5,000).

Wherefore your orator prays that your honors may decree that the defendant above named account as executor of the estate of Gazaway B. Lamar, deceased, and out of such assets of said estate as shall appear upon said accounting to be applicable thereto to pay to your orator the said legacy of fifty thousand dollars ($50,000), with interest from the 10th day of November, 1875, and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant, Gazaway De Rosset Lamar, and under a certain penalty to be and appear in this honorable court, and then and there to answer all and singular the premises and to stand and perform such further direction and decree as may be made against him.

And your orator, as in duty bound, will ever pray, &c.

TOWNSEND & WEED,
Solicitors for Complainant, 32 Park Place, New York.

JOHN W. WEED, *Of Counsel.*

(Endorsed:) U. S. circuit court, southern dist. of N. Y. The City Council of Augusta against Gazaway De Rosset Lamar, executor, etc., of Gazaway B. Lamar, dec'd. Complaint. Townsend & Weed, att'ys for complainant, 32 Park place, N. Y. (File-mark:) U. S. circuit court. Filed Dec. 15, 1881. Joseph M. Deuel, clerk.

6 United States Circuit Court, Southern District of New York.
(In Equity.)

THE CITY COUNCIL OF AUGUSTA, Complainant,
against
GAZAWAY DE ROSSET LAMAR, as Executor of the Will of Gazaway B. Lamar, Deceased, Defendant. } Answer.

The answer of the above-named defendant, G. De Rosset Lamar, as executor of the will of Gazaway B. Lamar, deceased, to the bill of complaint of the above-named complainant.

This defendant, saving and reserving to himself all and all manner of advantage that may be taken by exception or otherwise to the many errors, imperfections, and insufficiencies of the complainant's bill, for answer to so much thereof as he is advised is material or necessary for him to make answer unto, answering, says:

This defendant denies that the will of the said Gazaway B. Lamar took effect at the time of the making of said will, as is alleged in the second paragraph of the complaint, but avers that the said will, like all other wills, took effect at the time of the decease of the testator, and he denies that the testator conveyed any property to the complainant on the 28th day of September, 1872.

And this defendant, in further answering, says that the eleventh clause of the said will, set out in the second paragraph of the complaint, is subject to the various limitations and restrictions
7 contained in the said will, contemplating various contingencies, some of which have not happened, and until the happening of which the bequest in the eleventh clause of the said will is inoperative.

And this defendant, further answering in regard to the allegation contained in the fourth paragraph of the bill of complaint, admits that Gazaway B. Lamar, the testator, did collect large sums of money from the Government of the United States, being a part of the amounts due him, as he believed and stated in his said will, but he did not collect other large parts of such amounts, and this defendant, in pursuance of the instructions of the will, is now engaged in suits for the purpose of collecting those other large sums, out of which the legacy to the complainant will be payable, if, upon the settlement of the conditions of the will, there should appear to be a balance sufficient for that purpose; and this defendant further says that, in respect to the amounts collected by the testator as set out in the said third paragraph, suits for very large amounts thereof and equal to about $400,000.00 are now pending against this defendant as executor, &c.—that is to say, a suit by George H. Cheever, as administrator, &c., of William W. Cheever, deceased,

against Gazaway De Rosset Lamar, as executor, &c., of Gazaway B. Lamar, deceased, in the supreme court of the State of New York, and a suit by Charles J. McCoy against G. De Rosset Lamar, as executor, &c., in this honorable court, wherein a decree has been entered for the complainant for the sum of twenty-six thousand four hundred and ten $\frac{72}{100}$ dollars, from which decree an appeal is to be taken to the United States Supreme Court, and that if the claims made by the complainants in those suits should be adjudged to be valid they would absorb the greater part of the moneys collected by the testator, Gazaway B. Lamar, and there would be none to pay the legacy to this complainant, even if it were true, as assumed in the bill of complaint, that it was entitled to be paid out of any monies which came into the hands of the testator during
8 his lifetime and which were not the subject of his will at the time of his death.

And this defendant, further answering in respect to the allegation contained in the fifth paragraph of the bill of complaint, admits that the said Gazaway B. Lamar died on or about the 5th day of October, 1874, at the city of New York, but he denies that the estate left by the said Gazaway B. Lamar amounted to one hundred thousand dollars and upwards, exclusive of the collections made by him on account of his cotton claims, or to five hundred thousand dollars and upwards, inclusive of the said collections made on account of said claims.

And this defendant, in answer to the allegations contained in the ninth paragraph of the bill of complaint, denies that all the debts of the deceased and all the legatees entitled to a priority of payment over the complainant have been paid, and further denies that he has in hand and applicable to the payment of the legacy given by the said will money sufficient to pay the same in full, and further denies that the claims against the estate of the said Gazaway B. Lamar, deceased, are settled or are barred by any limitations, but avers that, on the contrary, the suits above referred to and also two suits brought by Mary J. C. Micon, as administratrix, etc. (in which there has been a decision in favor of the complainant, and in which it is claimed that $30,000 are due to the complainant), as well as other suits and claims are pending, and that until they are determined finally it cannot be known whether there is any money applicable to the legacy set out in the bill of complaint, assuming that the complainant is entitled, as of the 28th of September, 1872, to call the executor to an account for the estate in the hands of Gazaway B. Lamar at that time.

And the said defendant, further answering, denies that the said complainant is entitled to the relief or any part thereof in the said complaint demanded.

And this defendant prays the same advantage of his afore-
9 said answer as if he had pleaded or demurred to the said bill of complaint; and this defendant prays leave to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

DICKERSON & DICKERSON,
Solicitors for Defendant and of Counsel.

Verification of foregoing answer is hereby waived.

TOWNSEND & WEED,
Solicitors for Complainant.

(Endorsed:) United States circuit court, so. district of New York. In equity. The City Council of Augusta *vs.* Gazaway De Rosset Lamar, executor. Answer. Dickerson & Dickerson, def't's solicitors, New York city.

(File-mark:) U. S. circuit court. Filed Nov. 11, 1882. Joseph M. Deuel, clerk.

10 Circuit Court of the United States for the Southern District of New York.

THE CITY COUNCIL OF AUGUSTA
against
GAZAWAY DE R. LAMAR, as the Executor of the Will of Gazaway B. Lamar, Deceased. } Reply.

The City Council of Augusta, respectfully saving and reserving unto itself now and at all times hereinafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the answer, shows:

I. That your orator, the complainant, upon information and belief denies each and every allegation in the answer contained, and avers that your orator will maintain and prove to be true the allegations contained in its bill of complaint.

TOWNSEND & WEED,
Solicitors for the Complainant, 32 Park Place, New York.

JOHN W. WEED, *Of Counsel.*

We hereby waive verification of the foregoing reply.

DICKERSON & DICKERSON,
Solicitors for the Defendant.

(Endorsed:) U. S. circuit court. City Council of Augusta *vs.* Gazaway B. Lamar, ex'r, etc. Reply. Townsend & Weed, pl'ff's att'ys.

(File-mark.) U. S. circuit court. Filed Nov. 13, 1882. Joseph M. Deuel, clerk.

11 U. S. Circuit Court, Southern District of New York.

THE CITY COUNCIL OF AUGUSTA
vs.
HARRIETT CAZENOVE JONES and FRANK CAZENOVE JONES, as Administrators, with the Will Annexed, of the Estate of Gazaway B. Lamar, deceased.

Statement of Facts.

It is hereby stipulated and agreed that the following are the facts in the above-entitled suit:

1. On the 28th day of September, 1872, Gazaway B. Lamar, since deceased, made a will, a copy whereof is hereunto annexed.

2. The complainant, The City Council of Augusta, is a municipal corporation incorporated under the laws of the State of Georgia, and its object is the carrying on of the city government of the city of Augusta. It was entitled to receive and sue for donations of real and personal property.

At the time of the testator's death it carried on its business at the city of Augusta, Georgia.

The complainant is the legatee designated by the testator in the 11th item of his will as the mayor and aldermen of the city of Augusta.

The complainant established a hospital, such as required by the testator, within two years after his death.

3. At the time of making his will the testator was the owner of real and personal property, besides claims for cotton, amounting to about $61,000 in value, of which about $37,100 was in real
12 estate, and was interested, as hereinafter stated, in claims. which are specified in his will, against the Government of the United States and its officers for cotton seized during the war, amounting to several hundred thousand dollars, for which suits in the U. S. Court of Claims and elsewhere were then pending, brought by the testator in his own name alone.

4. That at the date at which the testator made his will C. A. L. Lamar and W. W. Cheever were dead, each having died prior to 1866; that during the lifetime of said C. A. L. Lamar and W. W. Cheever they and the said testator, Gazaway B. Lamar, then residents of the city of Savannah, Georgia, had been engaged in the buying and selling of guano on joint account, and in that business large losses had occurred, which losses were referred to by the testator in item 7 of his will, and by reason of which losses the estates of said C. A. L. Lamar and said W. W. Cheever were in 1866 and prior to the making of any claim against the United States Government and thereafter to the time when Mr. G. B. Lamar made his will and to the time of his death largely indebted to the said G. B. Lamar; that the said C. A. L. Lamar and W. W. Cheever and the testator had under separate agreements also been engaged in buying and selling cotton on joint account; that the interest of the testator in the several cotton claims specified in his will is correctly stated in his will, with the following modifications:

The legal title to the first claim, "32 bales sea island belonging to the estate of my son, C. A. L. Lamar," was held by the testator, with the right to apply the proceeds thereof to the satisfaction of his account against said estate of his son for the losses on guano account mentioned and referred to in his will, which account of
13 the testator against the estate of C. A. L. Lamar, after crediting said estate with all other dues to it at the time of making said will and at the testator's death, largely exceeded the value or proceeds of said first claim.

The legal title to the second, third, and fourth claims, to wit, (2) "136 bales upland, bought by C. A. L. Lamar of F. S. Gue and paid

for by him at sixteen cents per pound for equally joint account with me;" (3) "112 bales upland, bought by H. Meinhard & Bro. at $1.25 per lb. in currency and paid for by C. A. L. Lamar for equally joint account with me," and (4) "100 bales upland, bought of H. Meinhard Bros. and paid for by me $1.25 per lb. currency, making in all 348 bales for that account," was held by the testator, with the right to apply the proceeds of the one-half interest therein of C. A. L. Lamar to the satisfaction of his, the testator's, account against said C. A. L. Lamar's estate for losses on said guano account, which account, after crediting said estate with all other dues to it at the time of making said will and at the testator's death, largely exceeded the value or proceeds of said one-half interest in said claims.

The cotton mentioned in the fifth claim, "446 uplands, bought by W. W. Cheever of J. J. Williams and W. A. Taylor for joint account between him and me and paid for by me," had been paid for by the testator under an agreement with said Cheever that he, said Cheever, should be entitled to have the testator account to him for one-half of the profits, if any, which might be derived from the same, and the legal title to the same was held by the testator, with the right to apply any sum for which he might be accountable to said Cheever for his interest in said profits in satisfaction of his, the testator's, account against said Cheever's estate for losses on said guano account, which account, after crediting said estate with all other dues to it at the time of the making of said will and at the testator's death, largely exceeded the value or proceeds of the interest of said Cheever in said profits.

In the cotton mentioned in the sixth claim, "9 bales my own cotton," no other person than the testator had any interest.

14 The cotton mentioned in the seventh and eighth claims, to wit, "(7) 180 sea island, bought by Mr. Cheever and paid for by me for the equally joint account of W. W. Cheever and C. A. L. Lamar," and (8) "1,715 bales uplands, bought by W. W. Cheever and paid for by me for joint account of W. W. Cheever and C. A. L. Lamar and myself," had been paid for by the testator under an agreement with said Cheever and C. A. L. Lamar that each of them should be entitled to have the testator account to them for one-third of the profits, if any, which might be derived from the same. The testator held the legal title thereto, with the right to apply any sum for which he was accountable to either said Cheever or said C. A. L. Lamar for their interest in said profits in satisfaction of his, the testator's, account against the estates both of said Cheever and said C. A. L. Lamar for loss on said guano account, which account, after crediting said Cheever and said C. A. L. Lamar with all other dues to them at the time of making said will and at the testator's death, largely exceeded the value or proceeds of the interest of said Cheever and said C. A. L. Lamar in said profits.

5. That after the making of his will and prior to his death the testator collected from the Government of the United States upon a judgment recovered in his name alone in the United States Court of Claims the sum of about $342,819.80 net after

the payment of the expenses of recovery upon the several claims mentioned above in the fourth item of this statement; that of the net amount so collected from the cotton claims less than two hundred thousand dollars would have gone to the account of said G. B. Lamar but for the fact that he was entitled to the whole thereof when the accounts of C. A. L. Lamar and W. W. Cheever were respectively charged by him with the one-third of their losses on the said guano account, the estate of C. A. L. Lamar and of said
15 W. W. Cheever being in fact indebted to the said G. B. Lamar over and above their share in the net amount so collected from the cotton claims.

6. On the 4th day of October, 1874, the testator died, at the city of New York, and on the 10th day of November, 1874, the said will of the deceased was admitted to probate and letters testamentary issued to the original defendant, Gazaway De Rosset Lamar, by the surrogate of New York county.

7. At the time of the testator's death he still held the $61,000 worth of property he held prior to the collection of his claims against the United States, and also securities in which he had invested the proceeds of the claims collected. The value of such securities was $342,819.80, making the total value of the estate left by him $403,819.80.

8. That at the time of the death of the testator none of the claims mentioned in the will, except those referred to in the fourth and fifth items of this statement, had been collected, and none of them have been since collected, although the executor has pressed the collection of the same by suit and other proceedings, and the administrators are still pressing the collection of the same by appropriate proceedings before Congress.

One of the claims so pressed by the executor was the following: A claim "for 484 bales upland, bought by W. W. Cheever, paid for by me, and taken from Thomasville by A. G. Brown, Jr., per his receipt in the Treasury Department." An action was brought in the circuit court of the United States for the district of Massachusetts against A. G. Brown, Jr., to collect this claim, but this suit was not successful in the circuit court, and the rulings of the circuit court were sustained by the Supreme Court of the United States. See the decision in the case of Lamar *vs.* Browne, 92 U. S., 187.

16 Another of the claims so pressed by the executor was the following: "For 426 bales upland, bought by W. W. Cheever and paid for by me; taken from Florida by D. G. Cabell."

An action was brought in the circuit court of the United States for the southern district of New York against Mr. McCullouch, Secretary of the Treasury, to collect this claim, but this suit was not successful in the circuit court, and the rulings of the circuit court were sustained by the Supreme Court of the United States. See the decision in Lamar *vs.* McCulloch, 115 U. S., 163.

The said claims are not now recoverable in any court, their prosecution being barred by the statute of limitations.

9. A portion of said securities left by said testator consisted of

$60,000 in the bonds of the city of Savannah, Georgia, the coupons of which were payable on the 1st of July and January in each year, which were purchased by the testator during the months of May and June, in the year 1874, at a cost of $50,000, which was their value at the time of the testator's death. When purchased they were deposited by him with T. M. Cunningham, of said city of Savannah, with instructions given by said testator, first, in letter under date of June 25th, 1874, reading as follows:

"Please to permit John Stoddard, Esq., president of the hospital, or Dr. Wm. Duncan, the secretary and treasurer of it, to take coupons off the sixty Savannah city bonds on deposit with you, on my account, due 1 July ensuing, and this shall be your warrant for them."

And, second, in letter under date 20th July, 1874:

"Hold $60,000 of the Savannah city bonds as the property of the infirmary, but under my control, until I arrange conditions with the president and managers."

17 In compliance with the instructions contained in said first-mentioned letter, said Cunningham, on or about the first day of July, 1874, delivered to the president or secretary of the Georgia infirmary, at Savannah, mentioned in the eleventh item of the testator's will, $2,100, the amount of the coupons which fell due on that date on said $60,000 Savannah city bonds.

After the death of the testator said Cunningham, upon the demand of the executor of the testator's estate, in the month of November, 1874, surrendered to said executor said $60,000 of bonds.

10. It is further stipulated and agreed that the foregoing statement of facts is made by the parties hereto for the purpose of this suit only and is only binding upon them in said suit and is therein made only for the purpose of determining whether the complainant is entitled to a share in the assets left by the testator, which were in part the investment of the sums received by him upon said cotton claims from said United States Government, and shall in nowise, beyond the determination of such right, prejudice or affect the right of either party upon any proceeding or accounting which may hereafter be had in this suit or elsewhere to determine the exact amount of the share to which the complainant is entitled under said will.

EVARTS, CHOATE & BEAMAN,
Sol'rs for Def't.
JOHN W. WEED, *Sol'r for Compl'nt.*

July 17, 1888.

(Endorsed:) We hereby consent that the within statement of facts be filed *nunc pro tunc* as of December 12th, 1888, as a part of the record in this action. (S'g'd) John W. Weed, att'y for compl't. (S'g'd) Evarts, Choate & Beaman, att'ys for defendants.

18 At a stated term of the United States circuit court held in and for the southern district of New York, at the United

States court-rooms, in the post-office building, in the city of New York, on the 19th day of September, 1889.

Present: The Hon. E. Henry Lacombe, circuit judge.

THE CITY COUNCIL OF AUGUSTA
against
HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, as Adm'rs, etc.

On reading and filing the consent of the respective parties annexed to the statement of facts, it is ordered that the said statement of facts in this action be, and the same hereby is, filed *nunc pro tunc* as of December 12th, 1888, as a part of the record in this action.

(S'g'd) E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court. Filed Sept. 19, 1889. John A. Shields, clerk.

19 U. S. Circuit Court for the Southern District of New York.

CITY COUNCIL OF AUGUSTA, Complainant,
against
HARRIET CASANOVE JONES, FRANK CASANOVE JONES, as Administrators, with the Will Annexed, of the Estate of Gazaway B. Lamar, Deceased. } In Equity.

To the judges of the circuit court of the United States for the southern district of New York:

Your orators, complaining, respectfully show unto your honors:

1st. That the complainant above named is a corporation created by the laws of the State of Georgia, and carries on its business and has its legal residence therein.

II. That on or about the 15th day of December, 1881, your orators exhibited their original bill against Gazaway De Roesset Lamar, then the executor of the will of Gazaway B. Lamar, deceased, said deceased up to the time of his death having been a resident of the State of New York, and the said executor then being a resident also of said State and acting as such executor under letters testa-
20 mentary issued to him as sole executor by the surrogate of the county of New York, in the State of New York, before whom the will of said deceased had been proved and who had jurisdiction in the premises.

III. That said executor was duly served with process and appeared and put in his answer to said bill, and such proceedings were thereafter had in said cause that the testimony therein was taken and the said cause ready for submission to your honors.

IV. That on or about the 12th day of January, 1886, the said executor, Gazaway De Roesset Lamar, died, and thereupon such proceedings were had before the said surrogate of the said county of New York that on or about the 31st day of March, 1886, letters of

administration, with the will annexed, were issued to Harriet Casanove Jones and Frank Casanove Jones, the defendants above named, who reside in the city of New York, to administer the estate of Gazaway B. Lamar, deceased, and they have duly qualified and are now acting as such.

V. That, as your orators are informed and believe, the said suit commenced by your orators against the said Gazaway De Roesset Lamar, executor, and the proceedings therein have become abated by his death and they are entitled to have the said suit and the proceedings therein revived against said Harriet Casanove Jones and Frank Casanove Jones, as administrators, with the will annexed, as aforesaid, and the said suit and the proceedings therein put
21 in the same plight and condition as the same were previously to the abatement thereof by the death of the said Gazaway De Roesset Lamar.

To the end, therefore, that the said defendants may answer the premises and that the said suit and proceedings which became so abated as aforesaid may stand revived and be in the same state and condition as the same were in at the time of the death of the said Gazaway De Roesset Lamar, executor as aforesaid, or that the defendants may show cause to the contrary, may it please your honors to grant unto the plaintiff a writ of subpœna to revive, issuing out of and under the seal of this honorable court, to be directed to the said Harriet Casanove Jones and Frank Casanove Jones, thereby commanding them, at a certain day and under a certain penalty to be therein limited, personally to be and appear before your honors in this honorable court, then and there to show cause, if they can, why the said suit and the proceedings therein had should not stand and be revived against them as the administrators, with the will annexed, of the estate of Gazaway B. Lamar, deceased, and be in the same plight and condition as the same were in at the time of the abatement thereof; and further to show to and abide such order and decree in the premises as to your honors shall seem meet; and your orators will ever pray, &c.

JOHN W. WEED,
Attorney and Counsel for the Complainants,
38 *Pine Street, New York City.*

22 CITY AND COUNTY OF NEW YORK, *ss:*

John W. Weed, being duly sworn, says: I am the attorney and counsel of the complainant above named. The foregoing bill is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe it to be true; all the material allegations of said bill are within my personal knowledge. This affidavit is not made by the complainant for the reason that it is a foreign corporation, as stated therein.

JOHN W. WEED.

Sworn to before me this 10th day of November, 1886.

EDSON C. MARSHALL,
[L. S.] *Notary Public, N. Y. Co.*

(Endorsed:) U. S. circuit court. In equity. The City Council of Augusta, complainant, against Harriet Casanove Jones, Frank Casanove Jones, as administrators, with the will annexed, of the estate of Gazaway B. Lamar, deceased. Bill of revivor. John W. Weed, att'y for compl't, 38 Pine street, New York. U. S. circuit court. Filed Nov. 11, 1886. Timothy Griffith, clerk.

23 U. S. Circuit Court for the Southern District of New York.

CITY COUNCIL OF AUGUSTA
against
HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, as Administrators, with the Will Annexed, of the Estate of Gazaway B. Lamar, Deceased.

Please take notice that we are retained by and hereby appear for Harriet Cazenove Jones and Frank Cazenove Jones, as administrator-, with the will annexed, of the estate of Gazaway B. Lamar, deceased.

Dated New York, December 6th, 1886.

Yours, &c., EVARTS, CHOATE & BEAMAN,
Solicitors for Defendants.

To Timothy Griffith, Esq., clerk of the U. S. circuit court for the southern district of New York.

(Endorsed:) In equity. City Council of Augusta *vs.* Harriet C. Jones *et al.* Notice of appearances. Evarts, Choate & Beaman, sol'rs for def'ts. U. S. circuit court. Filed Dec. 6, 1886. Timothy Griffith, clerk.

24 At a stated term of the circuit court of the United States of America, in the southern district of New York, in the second circuit, held in the rooms of said court, in the post-office building, in the city of New York, on the 26th day of February, in the year one thousand eight hundred and eighty-nine.

Present: Hon. William J. Wallace, circuit judge.

THE CITY COUNCIL OF AUGUSTA
against
HARRIET CAZENOVE JONES, FRANK CAZENOVE JONES, as Administrator-, with the Will Annexed, of the Estate of Gazaway B. Lamar, Deceased.

This cause having come on to be heard upon the bill of complaint therein, the defendants' answer and the complainant's reply thereto, and upon an agreed statement of facts, and having been argued by John W. Weed, Esq., attorney for the complainant, and Charles C. Beaman, Esq., of counsel for the defendants: now, in consideration thereof, it is—

Ordered, adjudged, and decreed, and the court doth hereby
25 order, adjudge, and decree, as follows, viz: That the complainant's said bill of complaint be, and the same hereby is,

dismissed with costs to the defendant, amounting to sixty-two dollars and eighty cents ($62.80), as heretofore taxed by the clerk of this court.

(Signed) WM. J. WALLACE.

I hereby approve of the form of the foregoing decree and consent to the entry thereof.

Dated May 23rd, 1889.

JOHN W. WEED,
Attorney for Complainants.

(Endorsed:) U. S. circuit court, so. dist. of New York. The City Council of Augusta against Harriet Cazenove Jones and ano. Decree. Evarts, Choate & Beaman, defendants' attorneys, 52 Wall street, N. Y. city.

(File-mark:) U. S. circuit court. Filed June 11, 1889. John A. Shields, clerk.

26 Supreme Court of the United States.

THE CITY COUNCIL OF AUGUSTA
against
HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, as Administrators, with the Will Annexed, of the Estate of Gazaway B. Lamar, Deceased.

The appeal of The City Council of Augusta, the above-named complainant and appellant, respectfully showeth—

That upon the 15th day of December, 1881, the above-named complainant and appellant filed *his* bill in the circuit court of the United States for the southern district of New York against the above-named defendants and respondents, in which it sets forth that it was a corporation incorporated under the laws of the State of Georgia and was authorized to receive all legacies which might be given to it for charitable purposes.

That in October, 1874, Gazaway B. Lamar died in the city of New York, leaving a will, whereby he gave to this appellant a legacy of $50,000, which was to be applied to the relief of indigent negroes.

That the defendants and respondents, who were the ad-
27 ministrators, with the will annexed, of the deceased, had refused to pay over said legacy.

And said bill prayed that the defendants might be compelled to account and pay over said legacy.

That the defendants and respondents filed an answer denying the claim of the appellants.

That thereupon the appellants filed its reply, denying all the allegations contained in the answer

That thereupon the respective parties agreed upon a statement of facts which was filed in this cause.

That on the 26th day of February, 1889, after counsel for the respective parties had been heard, a final decree was made and pro-

mounced in the cause, wherein it was in substance adjudged and decreed—

That the appellant's said bill of complaint be, and thereby was, dismissed with costs to the defendant-.

Wherefore this appellant appeals from the whole decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made directing an accounting and the payment of said legacy to the appellant, with costs, or such other decree made as to the said Supreme Court shall seem just.

Dated New York, August 12th, 1889.

(S'd) JOHN W. WEED,
Sol'r for App'l't.

The foregoing appeal allowed Aug. 14th, 1889.
E. HENRY LACOMBE.

28 [Endorsed:] Supreme Court of the United States. The City Council of Augusta against Harriet Cazenove Jones & Frank Cazenove Jones, as administrators, with the will annexed, of Gazaway B. Lamar, deceased. Petition of appeal. John W. Weed, sol'r for compl'nt, 7 Nassau St., N. Y.

(Endorsed:) Due service of a copy of the within is hereby admitted. N. Y., August 19, 1889. (S'g'd) Evarts, Choate & Beaman, att'ys for def't.

(File-mark:) U. S. circuit court. Filed Sep. 24, 1889. John A. Shields, clerk.

29 Supreme Court of the United States.

THE CITY COUNCIL OF AUGUSTA
against
HARRIET CAZENOVE JONES and FRANK CAZENOVE JONES, as Administrators, with the Will Annexed, of Gazaway B. Lamar, Deceased.

Know all men by these presents that we, David Richmond, of 33 New street, in the city of New York, and Robert K. Richards, of 52 Broadway, in the city of New York, are held and firmly bound unto Harriet Cazenove Jones and Frank Cazenove Jones, as administrators, with the will annexed, of Gazaway B. Lamar, deceased, in the sum of two hundred and fifty dollars, to be paid to the said Harriet Cazenove Jones and Frank Cazenove Jones, as administrators, with the will annexed, of Gazaway B. Lamar, deceased, or their successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and

each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 31st day of July, 1889.

Whereas the above-named complainant hath taken an appeal to reverse the decree rendered in the above-entitled action by the United States circuit court for the southern district of New York:

30 Now, therefore, the condition of this obligation is such that if the above-named complainant shall prosecute its appeal to effect and answer all costs if *he* shall fail to make good *his* appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

DAVID RICHMOND. [SEAL.]
ROBERT K. RICHARDS. [SEAL.]

Sealed and delivered in presence of—
CHARLES MEYERS.

CITY AND COUNTY OF NEW YORK, *ss:*

David K. Richmond, being duly sworn, says that he is a resident and a householder within the State of New York and worth double the sum specified in the above undertaking over all the debts and liabilities which he owes or has incurred and exclusive *from* property exempt by law from levy and sale under an execution.

DAVID RICHMOND.

Sworn to before me this 5th day of August, 1889.

CHARLES MEYERS,
Commissioner of Deeds, City & County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Robert K. Richards, being duly sworn, says that he is a resident and a freeholder within the State of New York and worth double the sum specified in the above undertaking over all the debts and liabilities which he owes or has incurred and exclusive of

31 property exempt by law from levy and sale under an execution.

ROBERT K. RICHARDS.

Sworn to before me this 5th day of August, 1889.

CHARLES MEYERS,
Commissioner of Deeds, City & County of New York.

CITY & COUNTY OF NEW YORK, *ss:*

On this 5th day of August, 1889, personally before me appeared David Richmond and Robert K. Richards, severally known to me and known to me to be the individuals described in and who exe-

cuted the foregoing instrument, and they severally acknowledged that they executed the same.

CHARLES MEYERS,
Commissioner of Deeds, City & County of New York.

We approve the sufficiency of the sureties to the foregoing undertaking.

April 8th, 1889.

EVARTS, CHOATE & BEAMAN, *Def'ts' Sol'rs.*

32 [Endorsed:] Supreme Court of the United States. The City Council of Augusta against Harriet Cazenove Jones and Frank Cazenove Jones, as administrators, with the will annexed, of Gazaway B. Lamar, deceased. Copy. Undertaking on appeal. John W. Weed, att'y for compl'ts, No. 7 Nassau St., New York.

(Endorsed:) Approved as to form and sufficiency of sureties, Aug. 14th, 1889. (S'g'd) E. Henry Lacombe.

(File-mark:) U. S. circuit court. Filed Aug. 14, 1889. John A. Shields, clerk.

33 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York.

To Harriet Cazanove Jones and Frank Cazanove Jones, as administrators, with the will annexed, of the estate of Gazaway B. Lamar, deceased:

Whereas the City Council of Augusta has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, and the said City Council of Augusta has filed the security required by law, you are therefore hereby cited to appear before said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the — day of August, 1889.

(S'd) E. HENRY LACOMBE.

34 [Endorsed:] Supreme Court of the United States. The City Council of Augusta against Harriet Cazenove Jones & Frank Cazenove Jones, as administrators, with the will annexed, of Gazaway B. Lamar, deceased. Citation. John W. Weed, sol'r for compl'nt, 7 Nassau St., N. Y.

(Endorsed:) Due service of a copy of the within is hereby admitted. N. Y., August 19, 1889. (S'g'd) Evarts, Choate & Beaman, att'ys. for def't-.

(File-mark:) U. S. circuit court. Filed Sept. 24, 1889. John A. Shields, clerk.